SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 712

INTERNATIONAL ASSOCIATION OF MACHINISTS, *Petitioner*,

v.

VINCENT P. BRADY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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No.

INTERNATIONAL ASSOCIATION OF MACHINISTS, *Petitioner*,

v.

VINCENT P. BRADY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, the International Association of Machinists[1] (IAM), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in *International Association of Machinists* v. *Vincent P. Brady* (Case No. 16268), on August 13, 1968, affirming a judg-

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[1] During the course of the litigation the name of this organization was changed to "International Association of Machinists and Aerospace Workers".

ment of the United States District Court for the District of Delaware which (1) directs Trans World Airlines, Inc. (TWA), to reinstate Mr. Brady to the position of aircraft mechanic with that air carrier; (2) directs IAM to reinstate Mr. Brady to membership in the union with uninterrupted seniority; and (3) awards Mr. Brady damages against IAM and TWA (Appendix C, page 42a).[2] The District Court's order was based upon findings that Mr. Brady had been discharged from his employment with TWA in violation of the Court's interpretation of union security provisions of a collective bargaining agreement between IAM and TWA (Appendix D, pages 98a-103a).

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix B hereto, is not yet reported. Decisions of the District Court on various phases of this litigation are reported as *Brady* v. *Trans World Airlines,* 156 F. Supp. 82; *Brady* v. *Trans World Airlines,* 167 F. Supp. 469; *Brady* v. *Trans World Airlines,* 174 F. Supp. 360; *Brady* v. *Trans World Airlines,* 196 F. Supp. 504; *Brady* v. *Trans World Airlines,* 223 F. Supp. 361; and *Brady* v. *Trans World Airlines,* 244 F. Supp. 820. There is also a letter opinion of the District Court, dated May 3, 1962, a memorandum opinion of September 6, 1966, and an order of the same date, which are unreported. All of these decisions, both reported and unreported, are reproduced in Appendix D hereto.

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[2] Reference is to pages of separately printed Appendices containing opinions and orders of Court of Appeals and District Court.

JURISDICTION

The judgment of the Court of Appeals was entered on August 13, 1968 (Appendix C hereto). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

In the opinion of the petitioner, the following questions are presented:

1. Does an airline System Board of Adjustment established pursuant to the requirements of Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184) have jurisdiction of a dispute submitted to the board by an airline employee as to whether he has violated the union security provisions of a collective bargaining agreement?

2. Is the determination of an airline System Board of Adjustment established pursuant to the requirements of Section 204 of the Railway Labor Act on the interpretation and application of union security provisions of a collective bargaining agreement submitted to the Board by an airline employee final and binding upon the employee so as to deprive a Federal court of jurisdiction to entertain a suit by the employee praying for a different determination and upon such determination reinstatement to employment with back pay?

3. Assuming *arguendo* that the answers to Questions 1 and 2 are "No", does a Federal district court have jurisdiction to entertain a suit by an airline employee discharged pursuant to union security provisions of a collective bargaining agreement upon the basis of an allegation that local officers of the union discriminated

against the employee in not citing other claimed violators of the union security provisions for discharge when the complaint contains no allegation that the employee invoked internal union appellate procedures to redress the alleged actions of local officers and when such claim was not made by the employee to the System Board of Adjustment established pursuant to Section 204 of the Railway Labor Act when he protested his proposed discharge to that Board?

4. Assuming *arguendo* that the answers to Questions 1 and 2 are "No", does a Federal district court have jurisdiction to entertain a suit by an airline employee discharged pursuant to the union security provisions of a collective bargaining agreement on the basis of an allegation that error in interpreting and applying the agreement constitutes a violation of Section 2, Fourth and 2, Eleventh, of the Railway Labor Act?

5. Did the Court of Appeals err in holding that the union security provisions of the collective bargaining agreement had not been properly applied in the case of an employee where the evidence showed that the employee was four months delinquent in the payment of his dues, the union constitution provided that upon three months' delinquency an employee lost union membership and was required to pay a reinstatement fee for restoration of such membership, and the employee refused to pay such fee?

STATUTES INVOLVED

The statutory provisions involved are Section 2, First; Section 2, Fourth; Section 2, Fifth; Section 2, Seventh; Section 2, Eleventh; and Section 204 of the Railway Labor Act (45 U.S.C.A., Section 152, First,

Fourth, Fifth, Seventh, Eleventh; and Section 184). These statutory provisions are set forth in full in Appendix A hereto.

STATEMENT

On November 20, 1945, the National Mediation Board certified the IAM as the duly authorized representative for the purposes of the Railway Labor Act (45 U.S.C.A., Sections 151 et seq.), of the craft or class of machinists and related employees in the service of TWA. Pursuant to this representation, the IAM negotiated with TWA a collective bargaining agreement governing the rates of pay, rules, and working conditions of such employees which has been amended from time to time. The amended agreement in effect at the time involved in this litigation (Article XXVI) included union security provisions requiring that each employee of TWA covered by the agreement should, as a condition of continued employment, become a member of IAM within sixty days following the beginning of employment and should thereafter maintain membership in the IAM in good standing (Exhibit P-6).[3] The agreement defined good standing membership in the IAM for the purposes of the agreement as consisting of the payment by the employee of union dues for each calendar month not later than the last day of the following calendar month. The agreement also provided that dues should include reinstatement fees levied in accordance with the IAM Constitution. That Constitution provides that a person three months delinquent in the payment of dues loses his good standing membership and must

[3] Reference is to original record in District Court on file with this Court.

pay a reinstatement fee to regain such membership (Exhibit P-7).

The collective bargaining agreement (Article XII) further provided for the establishment of a TWA-IAM System Board of Adjustment in accordance with the requirements of Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184), to determine employee grievances and disputes growing out of the interpretation or application of the agreement, including the union security provisions. The agreement established a procedure for an employee cited for discharge under the union security provisions to appeal such action to the System Board and obtain a determination by the Board on the issue of whether he was in violation of the agreement. Such a determination was required to be made only after a hearing. The agreement finally provided that decisions of the System Board of Adjustment were final and binding upon all of the parties (Exhibit P-6).

Respondent Brady, who had been employed by TWA some years before, again became an employee of that air carrier as an aircraft mechanic at its terminal in the Philadelphia International Airport in 1951 (Trial Transcript, 14 and 15). He then became subject to the provisions of the collective bargaining agreement between IAM and TWA covering the machinist employees of TWA, including the union security provisions. During his prior employment with TWA, he had been a member of the IAM and shortly after his reemployment with TWA in 1951 he reestablished his membership in that organization, joining its Local Lodge 1776 (Trial Transcript, 14 and 15). The monthly dues uniformly required of members of Local Lodge

1776 employed at the Philadelphia International Airport in the work classification to which Mr. Brady belonged were $3.00 per month, which were the lowest for any local lodge in the country. At a meeting of Lodge 1776 on November 2, 1955, the membership voted to increase the monthly dues for the classification to which Mr. Brady belonged, effective with December dues, to the amount of $3.25 per month (Appendix D, page 88a).

Mr. Brady disputed the legality of the procedure followed by the lodge in raising the dues and refused to pay the $3.25 per month. Although repeated efforts were made by the Financial Secretary of the Lodge and other local district lodge officers to get Mr. Brady to pay the dues, he refused to do so (Appendix D, page 88a). Indeed, he was asked by the Local Lodge officers to pay the $3.25 under protest while he perused within the IAM the question of the validity of the increase, but he refused (Trial Transcript, 131-167). He would tender dues payments only at the old rate of $3.00 per month, which tenders were refused by the Local Lodge. This situation continued during the months of December 1955 and January and February 1956 (Trial Transcript, 109).

On February 9, 1956, Mr. Brady wrote to Mr. A. J. Hayes, then International President of the IAM, protesting the dues increase (Trial Transcript, 95). Mr. Hayes by letter, dated February 17, 1956, advised Mr. Brady that the dues increase "was handled properly" by Local Lodge 1776 and therefore was effective beginning with December 1955 (Exhibit D-1). If Mr. Brady was dissatisfied with this ruling, the Constitution of the IAM provided him with a procedure to seek

a ruling from the IAM Executive Council. Indeed, he had the right to appeal the matter to the IAM Grand Lodge Convention, which met in 1956 (Trial Transcript, 174-179, Exhibit P-7, Art. IV, Sec. 6). However, he neither paid the dues nor made any further effort to obtain a ruling on the matter within the union (Trial Transcript, 106-113).

Thereafter on February 15, 1956, Mr. Gerald Coleman, Financial Secretary of Lodge 1776,[4] posted a notice on the union bulletin board at the Philadelphia International Airport listing the nine individuals delinquent in their lodge dues and advising that they must pay up within 10 days or have their names sent to the District Office of the IAM for appropriate action. Mr. Brady's name appeared on this notice as delinquent in payment of dues for December 1955 and January 1956. Mr. Brady was in violation of the union security provisions on February 1, 1956, for failure to pay his dues for December 1955 by the end of January 1956. Mr. Coleman's action in giving Mr. Brady until February 25, 1956, to pay up and avoid citation for violation of such provisions was an act of grace not required by the agreement. Mr. Brady, however, did not pay his dues by February 25, 1956, as specified in Mr. Coleman's notice, and he was still delinquent on March 1, 1956, although each of the other nine listed delinquents promptly paid up (Appendix D, page 89a). Under the terms of the IAM Constitution on that date Mr. Brady was three months delinquent in the payment of dues and could then reestablish union member-

[4] The position was a part time unpaid job filled by a full time airline employee.

ship only by payment of a reinstatement fee of $25.00 (Exhibit P-7, Art. D, Secs. 14 and 15).

On March 3, 1956, Mr. Coleman cited Mr. Brady to the District Lodge of the IAM for dues delinquency (Appendix D, page 89a). Mr. Coleman would not have cited Mr. Brady even at that time if he had expressed any interest in paying his dues. Although other members of the Lodge had opposed the dues raise, Mr. Brady was the only member who refused to pay the dues at the increased rate (Trial Transcript, 232, 233).

At the time Mr. Coleman's letter to District Lodge 142 citing Mr. Brady for dues delinquency was received, Mr. Miller, the General Chairman of the District, was away on a field trip (Appendix D, page 89a). While he was away, his office on March 13, 1956, mailed a letter to Mr. Brady over Mr. Miller's mimeographed signature advising Mr. Brady that he had not complied with the provisions of the IAM-TWA union security agreement and that unless he paid his dues for the months of December 1955, and January, February and March 1956, by midnight of March 28, 1956, he would be discharged from employment by TWA. This letter called for a payment of $13.00 (Exhibit P-3). When Mr. Miller learned of this letter he told Mr. Coleman that, although Mr. Brady was three months delinquent in the payment of dues and hence could restore his good standing in the IAM only by payment of a reinstatement fee, Mr. Coleman should accept payment of the amount of $13.00 called for by the letter of March 13th if tendered and treat Mr. Brady as in good standing (Trial Transcript, 362).

Mr. Brady refused to pay the $13.00 and tendered a check in the amount of $10.50 on March 28, 1956 (Appendix D, page 90a). When Mr. Coleman advised Mr. Miller of this tender, he was told to return the check and to request Mr. Brady to pay a reinstatement fee by April 4, 1956 (Trial Transcript, 249-261). Mr. Coleman returned the check but erroneously requested Mr. Brady to pay both a reinstatement fee and past dues, or $34.75. When General Chairman Miller learned of this he wiped the slate clean [5] and wrote to Mr. Brady, explaining the requirement for a reinstatement fee, and giving him 15 days or until April 25, 1956, to place himself in good standing by the payment of such fee. Mr. Brady refused (Appendix D, page 90a).

Therefore, on May 1, 1956, Mr. Miller certified to TWA that Mr. Brady was in violation of the union security provisions of the collective bargaining agreement and Mr. Brady was advised of the citation (Appendix D, page 90a). On May 5, 1956, Mr. Brady appealed the citation to the System Board pursuant to the agreement and was notified by the Board that hearings thereon would be held before the Board on May 14, 1956.[6] Mr. Brady did not avail himself of the op-

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[5] Before learning of Mr. Coleman's mistake, Mr. Miller had certified to TWA that Mr. Brady was in violation of the union security provisions of the collective bargaining agreement. Upon learning of the error, he withdrew the citation (Trial Transcript, 364, 365; Exhibit P-15).

[6] On April 24, 1956, Mr. Brady prematurely appealed to the System Board. On May 4th the System Board advised him that the appeal was premature but that it would entertain an appeal from Mr. Miller's citation of May 1, 1956, if such appeal were made in accordance with the agreement (Exhibit P-72).

portunity to attend the hearings because of his belief that the System Board had before it all the necessary facts. Following such hearing the System Board decided that Mr. Brady was in violation of the agreement and he was accordingly discharged from employment by TWA effective May 15, 1956 (Complaint, para. 11, Exhibit P-73).

On February 2, 1957, Mr. Brady wrote to the System Board requesting it to reopen the case. This request was based upon a claim that Mr. Miller had not accurately presented the facts to the Board in that he failed to advise the Board that Mr. Brady had tendered the sum of $10.50 on March 27, 1956 (Exhibit P-75). The point was irrelevant because Mr. Brady's discharge had been based upon his failure to pay a reinstatement fee as requested in Mr. Miller's letter of April 11, 1956, and not for his failure to pay $13.00 dues on March 27th. The Board on February 14, 1957, denied Mr. Brady's request (Exhibit P-8).

Thereafter, Mr. Brady began his action in the District Court. His original complaint, filed on April 22, 1957, asked the court to reverse the decision of the System Board, to reinstate Mr. Brady to employment with TWA, and to award damages. This complaint was based upon allegations that Mr. Miller had not accurately presented the facts to the System Board. Subsequently, on December 1, 1958, a Second Amended Complaint was filed, which repeated the original complaint and added a claim for the first time that Mr. Brady had been discriminated against in that other employees of TWA who were in the same or substantially similar position as Mr. Brady with respect to non-payment of dues had not been discharged under

the union security provisions of the agreement.[7] The District Court denied the motions of the IAM and TWA to dismiss both the original and Second Amended Complaints for lack of jurisdiction of the subject matter or for failure to present a claim upon which relief could be granted (Appendix D, pages 57a-80a) and cross-motions of the parties for summary judgment (Appendix D, pages 81a-86a).

Following a trial before the court,[8] the District Court was unable to find any discrimination by IAM against Mr. Brady. However, it did find that Mr. Brady had been improperly discharged under the union shop agreement because it concluded that he was not required to pay more than two months' back dues on March 28, 1956 ($6.50), so that his tender of the $10.50 at that time was sufficient to maintain his membership standing (Appendix D, pages 88a-105a). Thereafter, the District Court, in a separate consideration, determined that Mr. Brady should be awarded back pay in the amount of $10,617.80, and ordered restoration of those fringe benefits to which he would have been entitled had his union membership and employment continued without a break. The District Court denied Mr. Brady's claims for punitive damages, damages for pain and anguish, damages to his

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[7] This Second Amended Complaint was filed after the District Court, on motions of IAM and TWA to dismiss, had indicated that it did not have jurisdiction of the subject matter of the original complaint since it did not raise a Federal question and diversity of citizenship was lacking (Appendix D, pages 63a, 64a). Moreover, no such claim had been made to the System Board (Exhibit D-3).

[8] The District Court granted the IAM motion to strike plaintiff's demand for a jury trial (Appendix D, page 86a).

wife, damages for value of airline passes, and attorneys' fees (Appendix D, pages 106a-115a).

Mr. Brady appealed the judgment of the District Court in Case No. 16,266 before the Court of Appeals. IAM cross-appealed in Case No. 16,268 and TWA also cross-appealed in Case No. 16,267. The Court of Appeals consolidated the appeals for hearing. On August 13, 1968, the Court of Appeals issued its opinion and judgment affirming the judgment of the District Court (Appendix B hereto).

REASONS FOR GRANTING WRIT

I

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS ON THE SAME MATTER

A. The decision of the Court of Appeals conflicts with decisions of other Courts of Appeals on the jurisdiction of the Railway Labor Act Adjustment Boards to interpret and apply union security provisions of a collective bargaining agreement.

Mr. Brady voluntarily appealed his proposed discharge for violation of the union security provisions of the applicable collective bargaining agreement to the TWA-IAM System Board of Adjustment established by such agreement to entertain employee grievances arising thereunder or employee claims concerning the interpretation and application of the agreement, including its union security provisions. The agreement made System Board decisions final and binding. The establishment of this Board was required by the provisions of Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184). Under those provisions its jurisdiction is the same as the jurisdiction of the Na-

tional Railroad Adjustment Board established by Section 3 of the statute whose decisions are also made final and binding by statute (45 U.S.C.A., Section 153). The System Board decided that Mr. Brady was in violation of the union security provisions of the agreement and subject to discharge thereunder.

Mr. Brady was not required to make this appeal. He could have treated his discharge as final and sued in an appropriate state court for money damages if the state court would recognize such a claim.[9] *Moore* v. *Illinois Central Railroad Company,* 312 U.S. 630; *Transcontinental & Western Air, Inc.* v. *Koppal,* 345 U.S. 653; *Walker* v. *Southern Ry. Co.,* 385 U.S. 196. However, he chose to seek retention of his employment. This can be done only by submission of the contract dispute to an adjustment board. Once an adjustment board has denied the claim it is final and binding on the employee. *Slocum* v. *Delaware, Lackawanna & Western Railroad Company,* 339 U.S. 239; *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.,* 353 U.S. 30, *Union Pacific Co.* v. *Price,* 360 U.S. 601. Public Law 89-456 (80 Stat. 208), effective June 20, 1966, provides limited judicial review for railroad adjustment board decisions which does not include a review of the merits of the award. *Brotherhood of Railroad Trainmen* v. *Denver & Rio Grande Western Railroad,* 370 F.2d 833 (10th Cir., 1966), *cert. den.* 386 U.S. 1018. The System Board decision denying Mr. Brady's claim was thus final and binding

[9] He could also have sued in a Federal court under Title 28, Section 1332 of the Judicial Code, if the required diversity of citizenship were present.

on him and not subject to judicial review or a Slocum type claim.[10]

The Court of Appeals in the present case held, however, that the decision of the System Board was not final and binding on Mr. Brady on the ground that such board did not properly have jurisdiction of his appeal. It found that the jurisdiction of the System Board was limited by the Railway Labor Act to disputes between an employee and a carrier and that Mr. Brady's grievance arising out of the application of the union security provisions of the collective bargaining agreement was not such a dispute, but only a dispute between an employee and a union. (Appendix B, pages 12a-14a.)

This holding directly conflicts with decisions of other Courts of Appeals sustaining the exclusive jurisdiction of adjustment boards to entertain and decide disputes involving the interpretation and application of union security provisions of collective bargaining agreements where the employee seeks a continuing employment relationship. *Battle* v. *Brotherhood of Railway and Steamship Clerks,* 320 F.2d 742 (D.C. Cir., 1963); *Alabaugh* v. *Baltimore & Ohio R. Co.,* 222 F.2d 861 (4th Cir., 1955), *cert. den.* 350 U.S. 839;[11]

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[10] It is clear that Section 204 of the Railway Labor Act creates the same statutory scheme for resolving employee grievances as well as interpreting and applying collective bargaining agreements as does Section 3 of the Railway Labor Act. *International Association of Machinists* v. *Central Airlines, Inc.,* 372 U.S. 682 (1963); *Wooley* v. *Eastern Air Lines, Inc.,* 250 F.2d 86, 90, 91 (5th Cir., 1957); *Sigfried* v. *Pan American World Airways, Inc.,* 230 F.2d 13 (5th Cir., 1956); *Bower* v. *Eastern Air Lines, Inc.,* 214 F.2d 623 (3rd Cir., 1954).

[11] In *Thompson* v. *Brotherhood of Sleeping Car Porters,* 316 F.2d 191, the Fourth Circuit modified *Alabaugh* to uphold court jurisdiction of a discrimination claim except claims arising under a valid union shop agreement. (See pages 198, 199.)

Pigott v. *Detroit, Toledo & Ironton Railroad Company,* 221 F.2d 736 (6th Cir., 1955); *United Railroad Operating Crafts* v. *Pennsylvania Railroad Co.* 212 F.2d 938 (7th Cir., 1954) *United Railroad Operating Crafts* v. *Northern Pacific Railroad Co.,* 208 F.2d 135 (9th Cir., 1953); *United Railroad Operating Crafts* v. *Wyer,* 115 F. Supp. 359 (D.C.S.D.N.Y., 1953), aff'd 205 F.2d 153 (2d Cir., 1953), *cert. den.* 347 U.S. 929; *Johns* v. *Baltimore & Ohio R. Co.,* 118 F. Supp. 317 (D.C.N.D. Ill., 1954), aff'd 347 U.S. 964.[12]

Nor is this conflict erased by a claim that the Second Amended Complaint alleged discrimination in the application of the union shop agreement. The employee claim as presented to the System Board was based solely on the adequacy of the employee's tender of March 27, 1956. No claim of discrimination was made

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[12] The *United Railroad Operating Crafts* cases involved decisions holding that railroad adjustment boards had jurisdiction to pass on a defense to a discharge under a union shop agreement that the employee involved was a member of a union "national in scope" within the meaning of Section 2, Eleventh, of the Railway Labor Act and so exempt from joining the citing union. In *Pennsylvania R. Co.* v. *Rychlik,* 352 U.S. 480 (1957), This Court, without passing on the jurisdiction of adjustment boards to determine whether a union was "national in scope", as required by Section 2(c), of the Railway Labor Act, affirmed dismissal of a complaint by a railroad employee discharged pursuant to union security provisions of a collective bargaining agreement who contended he met statutory standards of membership in a union "national in scope." It did so on the ground that there was available an administrative procedure to obtain such a classification which the union in question had not utilized. This decision in no way detracted from the basic holdings of the Second, Sixth, Seventh and Ninth Circuits that adjustment boards had jurisdiction of disputes arising under the union security provisions of collective bargaining agreements involving the interpretation and application of such agreements.

(Exhibit D-3).[13] The ruling of the Court of Appeals that the System Board did not have jurisdiction of such a claim must necessarily rest on a ground that boards of adjustment do not have jurisdiction of disputes arising under union security provisions of collective bargaining agreements involving the interpretation and application of such agreements. Nor did the Court of Appeals seek to draw any distinction between jurisdiction of a Railway Labor Act adjustment board of a dispute over the interpretation and application of the union security provisions of a collective bargaining agreement in cases where a claim of discrimination is made and cases where one is not made.[14]

Moreover, any such attempted distinction would not have removed conflict with decisions of other Courts of Appeals. In *Alabaugh* v. *Baltimore & Ohio R. Co.*, 222 F.2d 861, *cert. den.* 350 U.S. 839, the Fourth Circuit held that a claim of discrimination in the application of union security provisions did not take away the jurisdiction of adjustment boards over disputes concerning the interpretation and application of such agreements. That Circuit's subsequent decision in *Thompson* v. *Brotherhood of Sleeping Car Porters,*

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[13] Indeed the discrimination claim was nothing more than a thinly disguised effort to provide a theoretical basis for Federal court jurisdiction after it was clear the original complaint would be dismissed, *supra*, page 12, footnote 7. It was not founded on facts and neither the District Court nor the Court of Appeals was able to find any discrimination. Mr. Brady simply refused to pay the increased dues when all other members complied.

[14] It should also be observed that the Court of Appeals held that before a suit against IAM could be brought alleging discrimination by local officials, it was necessary for Mr. Brady to exhaust his internal union remedies (Appendix B, page 37a).

316 F.2d 191 (1963), modifying *Alabaugh,* excluded valid union shop agreements from its ambit (pages 198, 199). In addition, in *Thompson* v. *New York Central R. Co.,* 361 F.2d 137 (1966), the Second Circuit held that adjustment boards have jurisdiction of employee claims of discrimination where the claim turns, as it does in this case, upon questions of the interpretation and application of a collective bargaining agreement.

Insofar as the Court of Appeals relies upon the makeup of adjustment boards for its holding (Appendix B, page 14a), it is also in conflict with both the Fourth Circuit *Alabaugh* decision (page 867) and the Second Circuit *Thompson* decision (page 143, footnote 7).

B. The holding of the Court of Appeals that the claim of discrimination in the amended complaint raises a Federal question conflicts with decisions of other Courts of Appeals on this point.

After the Court of Appeals ruled that the determination of the TWA-IAM System Board of Adjustment was not final and binding on Mr. Brady, it was still faced with the question of whether or not there was Federal jurisdiction to entertain Mr. Brady's complaint (Appendix B, page 16a). In the absence of diversity that complaint was based upon a claim of a Federal question under Title 28, Section 1331 and 1337. The Court of Appeals held that such a question was presented in the claim of the Second Amended Complaint that Mr. Brady had been discriminated against in the application of the union security provisions of the collective bargaining agreement by local union officials in not citing other employees of TWA al-

leged to be similarly delinquent (Appendix B, page 106a).

This holding of the Court of Appeals conflicts with decisions of the United States Court of Appeals for the Seventh Circuit holding that violations of union security provisions by some union members do not protect from discharge another member who has violated such provision. *McNamar* v. *Baltimore & Ohio Chicago Terminal R. Co.*, 254 F.2d 717 (1958), affirming *McNamar* v. *Baltimore & Ohio Chicago Terminal R. Co.*, 153 F. Supp. 835 (D.C.N.D. Ind.); *Shiels* v. *Baltimore & Ohio R. Co.*, 254 F.2d 863 (1958), affirming *Shiels* v. *Baltimore & Ohio R. Co.*, 154 F. Supp. 917, *cert. den.* 358 U.S. 846.

C. The Court of Appeals decision conflicts with decisions of other Courts of Appeals holding that a union member must exhaust internal union remedies before he can sue his union for alleged discrimination.

The allegation in the amended complaint that local officers of the IAM had discriminated against Mr. Brady in the application of the union security provisions of the collective bargaining agreement did not allege that Mr. Brady had either exhausted his available internal union remedies to obtain redress from higher union officials or tribunals or that it was futile for him to do so. The decision of the Court of Appeals holding that the amended complaint raised a Federal question by its claim of discrimination also conflicts with decisions of the United States Court of Appeals for the Eighth Circuit in *Neal* v. *System Board of Adjustment*, 348 F.2d 722, 726, 727 (1965), and of the Fifth Circuit in *Fingar* v. *Seaboard Airline Railroad Company, et al.*, 277 F.2d 698 (1960), holding

that resort to internal union remedies, or an adequate reason for failure to do so, is a prerequisite to relief against a union or its officers in the Federal courts on a claim of discrimination. Indeed, the decision of the Court of Appeals conflicts with its own earlier decision in *Gainey* v. *Brotherhood of Railway and Steamship Clerks, et al.*, 275 F.2d 342, 345 (1960), in which the Court of Appeals sustained *a dismissal of a complaint* under the Railway Labor Act against a union alleging discrimination on the grounds of failing to allege exhaustion of internal union remedies. The Court of Appeals holding in the *Gainey* case read as follows (page 345):

> "Whether or not plaintiffs' allegations against the Brotherhood are sufficient to state a cause of action under the Railway Labor Act and the line of cases stemming from Steele v. Louisville & N. R. R., 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173, we need not decide here. The reason is that the plaintiffs have failed to allege exhaustion of their remedies within the union or an adequate reason for failure to do so. They say that their complaint 'has gone unheeded by all echelons of the Brotherhood since 1951,' but nowhere is there an allegation that they have attempted to pursue remedies available to them within the Brotherhood's internal structure. Recent Pennsylvania decisions show us that this Brotherhood does indeed provide internal remedies which appear adequate. *In a case as this, exhaustion of internal union remedies (absent an adequate reason for failure to do so) is a prerequisite to suit.* Both Pennsylvania and Federal authorities support this conclusion." (Emphasis supplied)

Curiously enough, the Court of Appeals also holds that it is a general rule, and the rule of the Third

Circuit, that before a suit against a union for breach of its duty of fair representation may be brought in the courts, a member must first exhaust his available internal union remedies or show an adequate reason for failing to do so citing the *Gainey* case. The Court of Appeals therefore holds that since there was no allegation or evidence that Mr. Brady had exhausted his internal union remedies to redress unfair treatment by local union officers Mr. Brady could not recover on his alleged discrimination claim (Appendix B, pages 37a, 38a).

II

THE COURT OF APPEALS DECISION CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

A. The decision of the Court of Appeals that Railway Labor Act adjustment boards do not have jurisdiction of disputes over the interpretation and application of collective bargaining agreements conflicts with the decision of this Court in *Johns* v. *Baltimore & Ohio R. Co., et al.*, 347 U.S. 964, affirming a decision of a three-judge court (*Johns* v. *Baltimore & Ohio R. Co.*, 118 F. Supp. 317), holding that such adjustment boards do have such jurisdiction.

B. Mr. Brady has here sought a continuation of his employment relationship with TWA and the award of back pay and other benefits attached to that employment based on a claim that he was improperly cited for discharge by IAM and improperly discharged by TWA under the union security provisions of the collectice bargaining agreement between TWA and IAM. The Court of Appeals decision to the effect that Federal courts have jurisdiction to entertain such a claim and grant such relief conflicts with decisions of this

Court holding that Railway Labor Act adjustment boards have exclusive jurisdiction of such a claim and that awards of an adjustment board with respect thereto are final and binding on the employee. *Slocum* v. *Delaware, Lackawanna & Western Ry. Co.,* 339 U.S. 239; *Transcontinental & Western Air, Inc.* v. *Koppal,* 345 U.S. 653; *Walker* v. *Southern Ry. Co.,* 385 U.S. 196; *Union Pacific Ry. Co.* v. *Price,* 360 U.S. 601.

III

THE COURT OF APPEALS DECISION RAISES SUBSTANTIAL AND IMPORTANT QUESTIONS OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

A. The decision raises substantial and important questions of Federal law with respect to the jurisdiction of Railway Labor Act adjustment boards.

This Court has heretofore interpreted the Railway Labor Act as establishing a statutory scheme for final and binding determinations by adjustment boards of employee grievances and disputes concerning the interpretation of collective bargaining agreements. *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.,* 353 U.S. 30; *Slocum* v. *Delaware, Lackawanna & Western R. Co.,* 339 U.S. 239. The only exception involves discharge cases where the employee accepts his discharge as final in which case he may sue for damages if applicable state law so permits. *Transcontinental & Western Air, Inc.* v. *Koppal,* 345 U.S. 653; *Walker* v. *Southern Ry. Co.,* 385 U.S. 196. The 1966 amendments to the Railway Labor Act permit limited judicial review of adjustment board awards which does not include review of the merits. This Court has only recently included in this statutory scheme jurisdictional work disputes between unions. *T.-C.E. Union* v. *Union Pacific Ry. Co.,* 385 U.S. 157.

The Court of Appeals decision takes out of this statutory scheme all disputes concerning the interpretation and application of union security provisions of collective bargaining agreements and removes from adjustment board jurisdiction all such disputes even where the employee seeks a continuing employment relationship. The creation of such a hole in the statutory scheme for adjustment board review of employee grievances raises important questions of Federal law which this Court should review. The impact of this decision on the statutory scheme for resolving employee grievances can be seen in the fact that the IAM alone has some 48 collective bargaining agreements executed pursuant to that statute containing security provisions similar to those here involved which cover some 57,269 employees of air transport companies.

B. The decision raises substantial and important questions of Federal jurisdiction.

The Court of Appeals bases Federal jurisdiction to interpret and apply the union security provisions of the collective bargaining agreement here involved upon the allegations in the Second Amended Complaint of discrimination against Mr. Brady and violation of his rights under Section 2, Fourth and Eleventh of the Railway Labor Act. Both of these findings raise substantial Federal questions (Appendix B, pages 16a-20a).

1. Contrary to the statements in the Court of Appeals decision, the amended complaint did not allege "hostile and invidious" discrimination required by the decisions of this Court as a basis for Federal jurisdiction. *Huffman* v. *Ford Motor Co.,* 345 U.S. 330; *Humphrey* v. *Moore,* 375 U.S. 335. Not only was such

a claim not made but the only factual allegations in the complaint in support of an allegation of discrimination were (a) a refusal to accept Mr. Brady's inadequate tender of March 28, 1956, (b) an alleged failure to notify Mr. Brady that he was two months delinquent in the payment of dues, and (c) that other employees of TWA who also violated the agreement were not discharged. Moreover, these claims had never been advanced by Mr. Brady to the union at any time, had not been advanced to the System Board of Adjustment, were not advanced until the case had been in litigation for some 18 months and were without foundation in fact, as shown by the inability of either the District Court or Court of Appeals to find any discrimination, much less "hostile and invidious" discrimination. It is respectfully submitted that basing Federal jurisdiction to interpret and apply a collective bargaining agreement upon such a basis raises substantial questions as to whether Federal jurisdiction can and should be so invoked.

2. The alternative basis for Federal jurisdiction suggested by the Court of Appeals is that the amended complaint alleged violations of Mr. Brady's rights under Section 2, Fourth and Eleventh of the Railway Labor Act and thus raised a Federal question. This conclusion is reached by the process of holding that if a union and a carrier err in interpreting and applying the union security provisions of a collective bargaining agreement such error per se constitutes a violation of the Railway Labor Act (Appendix B, pages 18a-20a). If the rationale of the Court of Appeals were sound, any minor dispute involving the interpretation and application of a collective bargaining agreement would constitute a dispute concerning a violation of

the Railway Labor Act and hence a basis for Federal jurisdiction since the failure to abide by such an agreement constitutes a violation of Section 2, Fourth and Seventh of that statute and would negate the entire statutory scheme for the resolution of such minor disputes by adjustment boards. It is submitted that the Court of Appeals holding raises a substantial and important Federal question with respect to Federal jurisdiction of Railway Labor Act collective bargaining agreements.

IV

THE COURT OF APPEALS DECISION ERRS IN SUBSTANTIAL AND IMPORTANT RESPECTS

The District Court found, and the Court of Appeals affirmed, that Mr. Brady's tender to the Financial Secretary of Local Lodge 1776 of $10.50 on March 28, 1956, was sufficient to maintain his good standing membership in the IAM, so that he was not required to pay a reinstatement fee when it was demanded of him on April 18, 1956, and hence he was not subject to discharge under the union security provisions of the collective bargaining provisions of the collective bargaining agreement (Appendix B, pages 21a-26a). This conclusion is based upon a finding that a three months' delinquency invoking the requirements for a reinstatement fee did not occur until March 31, 1956, rather than on March 1st as contended by the IAM. Thus, the Court of Appeals concludes that on March 27, 1956, although Mr. Brady had not paid any dues for the preceding months of December, January, and February, nor any dues for the month of March, he was not delinquent only in the payment of his December, 1955, and January, 1956 dues. (Appendix B, pages 21a-26a).

The uncontradicted evidence of record is that under the IAM constitution monthly dues are required to be paid on the first day of the month and that failure to do so makes the member delinquent for that month (Heisler Affidavit and Exhibits thereto). Thus, under the provisions of the constitution Mr. Brady was three months delinquent on March 1, 1956, and at that time was required to pay a reinstatement fee in order to maintain his union standing. The Court of Appeals finds, however, that the union security provisions of the collective bargaining agreement providing for citation if one month's dues are not paid by the end of the second month modifies the IAM constitutional provision so that a three months' delinquency does not occur until the end of the fourth month. Such reasoning is clearly erroneous.

The provision in the union shop agreement postponing a month's delinquency to the next month is clearly applicable only when a citation is based on a single month's delinquency. Paragraph (n) of the union security provisions (Exhibit P-6, Art. XXVI) also defines the term "dues" under the agreement as including a reinstatement fee levied in accordance with the IAM constitution. This is obviously intended to take care of a situation, as here, where an employee is not cited for a delinquency of one month at the end of the second month, but the delinquency continues until such time as he has lost membership in the union under the IAM constitution and must pay a reinstatement fee. The Court of Appeals decision (Appendix B, page 27a) says, however, that the employee is entitled to clear notice of his responsibilities. Such notice was given to Mr. Brady in the present case in that he was not finally cited until May 1, 1956,

and not then until he had been given the 15 days provided by the union security provisions of the agreement to pay a reinstatement fee, the situation had been carefully explained to him and he had refused. Mr. Brady did not at that time complain of any lack of notice. Nor did he even claim that it was not proper to request a reinstatement fee. He simply did not want to pay one (Exhibit P-19). The reasoning of the Court of Appeals is also inconsistent with its finding (Appendix B, page 37a) that Mr. Brady was a shop steward knowledgeable of union procedures and hence accountable for failure to utilize such procedures.

Assuming *arguendo* that the three months' delinquency for reinstatement under the IAM Constitution did not occur until the end of March 1956, nevertheless Mr. Brady clearly violated the provisions of the union shop agreement by refusing to pay his dues for December 1955 and January 1956 before the end of February 1956, and had no complaint because he was cited and dismissed under such agreement. *International Association of Machinists* v. *National Labor Relations Board,* 247 F.2d 414, 420 (2nd Cir., 1957); *National Labor Relations Board* v. *Technicolor Motion Picture Corp.,* 248 F.2d 348, 353-354 (9th Cir., 1957).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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